

STEPS FOR AMENDING AREA SOLID WASTE MANAGEMENT PLAN

STEP 1. Submit "Application to Amend Area Solid Waste Management Plan" Form A

- Submit to: Recycling and Local Assistance Branch
Division of Waste Management
200 Fair Oaks, 2ND Floor
Frankfort, KY 40601
Attn: Branch Manager
- Division will respond within 30 days
- County will resubmit or revise as necessary
- County will be notified if the proposed amendment requires the 30-day public notice OR if no further steps are necessary to incorporate the proposed amendment.

NOTE: If the governing body receives a request from an applicant to site or expand a municipal solid waste management facility, refer to Page 11, Procedures for Local Determination, for additional instructions before proceeding further.

STEP 2. Publish "Public Notice" Form B.

- Allow 30 days for public comment.
- Hold public hearing, if requested.
- Verify notice by affidavit.

STEP 3. Pass Resolution(s) Form C, D and/or E (consistency determination) as required

- Governing Body, County and/or City pass resolutions approving the proposed amendment.
- Notify the division by *resolution* if the governing body does not approve the proposed amendment.
- Governing Body, County and/or City pass resolutions determining consistency/inconsistency.

STEP 4. Submit Documentation to Division of Waste Management Form G

- Submit to: Recycling and Local Assistance
Division of Waste Management
200 Fair Oaks, 2nd Floor
Frankfort, KY 40601
Attn: Branch Manager
- Division will notify the governing body by letter of the status of the proposed amendment/consistency determination and will file the paperwork with the Area Solid Waste Management Plan.

**APPLICATION TO AMEND
AREA SOLID WASTE MANAGEMENT PLAN**

[insert name] County intends to consider amending its Area Solid Waste Management Plan.

Governing body responsible for plan implementation:

Name: _____

Address: _____

Email: _____

Contact Person Name: _____

Address: _____

Email: _____

Telephone: _____

The pages of the plan to be affected and a brief statement of the nature of the proposed amendment are listed below.

Page(s) _____; Nature of Amendment _____

Page(s) _____; Nature of Amendment _____

Page(s) _____; Nature of Amendment _____

Attach a separate page for a formal written description of the proposed amendment outlining: justification, desired outcome, implementation schedules, and financial accountability.

Signature

[insert name] County Governing
Body Chairperson

Date

PUBLIC NOTICE FOR PLAN AMENDMENT

The Governing Body of **[insert name]** County will conduct a public comment period to consider amending the Area's Solid Waste Management Plan. The proposal was submitted to the Kentucky Energy and Environment and Cabinet, Division of Waste Management, in accordance with KRS 224.43-340 and 401 KAR 49.011, Section 4 (attached). If approved, the amendment would revise the **[insert name]** County Area Solid Waste Management Plan by:

The proposed plan amendment is available for public inspection beginning **[month, day, and year]** at the following locations during their normal business hours:

- _____ County Judge/Executive's/109 Board Chairperson's office, **[street address]**.
- _____ County Solid Waste Coordinator's office, **[street address]**.
- _____ County Public Library (name of city), **[street address]**.
- _____ City Hall, **[street address]**.

Additional information about the proposed plan amendment is available from **[insert contact name]**, **[insert name]** County Solid Waste Coordinator (**and/or governing body chair**), at **[phone number]**. Anyone unable to review the plan at the above locations may call and request that a copy of the relevant pages be mailed to them.

Any person wishing to comment on the proposed plan amendment may do so by submitting written comments no later than **[date]**, to the **[insert name]** County **[fiscal court/109 board]** at **[address]**.

A public hearing is scheduled on **[month, day, and year]** at **[time]** to receive public comments on the proposed plan amendment. The hearing will be held at the **[insert name]** County Courthouse (*or alternate location*). *The county can schedule the public hearing on the 31st day or the next working day after the 30-day public notice period.*

The Governing Body will respond to written public comments within 15 days of the close of the public comment period, and will consider the proposed plan amendment for passage at the **[month]** fiscal court meeting. A resolution regarding the proposed plan amendment will then be submitted to the Kentucky Energy and Environment Cabinet for review.

COUNTY RESOLUTION APPROVING AMENDMENT # _____

A resolution approving the submission of **[insert name]** County's application to amend the **[insert name]** County Area Solid Waste Management Plan and adopting the amendment(s) as public noticed.

WHEREAS: The Governing Body of **[insert name]** County, based on updated information on the area's solid waste management practices, and acting on behalf of its citizens, is amending the **[insert name]** County Area Solid Waste Management Plan; and

WHEREAS: The Governing Body of **[insert name]** County is acting pursuant to KRS 224.43-340 that requires every county in the Commonwealth of Kentucky to formally adopt any change(s) in its solid waste management practices; and

WHEREAS: The Governing Body of **[insert name]** County will revise the Area Solid Waste Management Plan and is eligible to amend and implement such revision(s).

NOW THEREFORE, BE IT RESOLVED by the Governing Body of **[insert name]** County, Kentucky, as follows:

[insert name] County published a thirty day public notice and **[held/did not hold]** a public hearing (*if requested*). Consideration was given to oral/written comments for the proposed amendment(s), and the governing body elects to pass a resolution outlining the changes to the **[insert name]** County Area Solid Waste Management Plan.

SECTION I. Having reviewed the amendments to the **[insert name]** County Area Solid Waste Management Plan, the Governing Body of **[insert name]** County approves the following (list amendments):

Enacted this _____ day of _____, 20____.

Governing Body Chairperson
[insert name] County, Kentucky

FORM D

(City Resolution –
applies only to 1st
and 2nd Class Cities)

CITY RESOLUTION SUPPORTING COUNTY AMENDMENTS

A resolution adopting amendments to the **[insert name]** County Area Solid Waste Management Plan and recognizing **[city name]** as a part of the **[name]** County Area Solid Waste Management Area.

WHEREAS: The City of **[insert name]** finds it to be in their best interest to amend the waste management program(s) pertinent to the City of **[insert name]** to assure its citizens a healthful and environmentally safe place to live and work.

NOW THEREFORE BE IT RESOLVED by the City Council of **[insert name]**, **[insert name]** County, Kentucky, as follows:

SECTION I. Having reviewed the amendments to the **[insert name]** County Area Solid Waste Management Plan, the **[insert name]** City Council hereby approves the following (list amendments):

Enacted this _____ day of _____, 20____.

Mayor of **[insert name]**
[insert name] County, Kentucky

**PUBLIC NOTICE FOR CONSISTENCY DETERMINATION
WITH AREA SOLID WASTE MANAGEMENT PLAN**

The **[insert name]** County **[fiscal court/109 board]** is seeking public comment on the issue of consistency with the _____ County area solid waste management plan regarding the Application/Notice of Intent received by the governing body on **[date]**. The Application/Notice of Intent received from **[applicant's name]** outlines the proposed **[construction and/or expansion]** of a municipal solid waste disposal facility known as **[name of facility]**.

[applicant's name]'s proposal is to *CONSTRUCT* a **[contained landfill/ off-site residual landfill/ greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility with a proposed ten-year capacity of _____ tons and airspace volume of _____ cubic yards.

AND/OR

[applicant's name]'s proposal is to *EXPAND* a **[contained landfill/ off-site residual landfill/ greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility with a proposed ten-year capacity of _____ tons and airspace volume of _____ cubic yards.

Pursuant to KRS 224.43-315, the **[insert name]** County **[fiscal court/109 board]** will make a determination of consistency after public notice and opportunity for public comment and hearing.

The Application/Notice of Intent and the **[insert name]** County area solid waste management plan are available for public inspection at the following locations during their normal business hours: *List locations here with name of office and street address – I suggest the county list the county j/e 's/109 Board/ solid waste coordinator's office as well as the local library or city hall.*

Additional information about the Application/Notice of Intent is available from *list the judge/109 Board/ solid waste coordinator* at () - . Anyone unable to review the Application/Notice of Intent and/or the relevant pages of the area solid waste management plan at the above locations may call and request that a copy be mailed to them.

Any person wishing to comment on the consistency determination may do so by submitting written comments to be received no later than **[month, day, year to name of official and address -last day of the public notice]**. *The public notice shall run a minimum of seven (7) days.*

A public hearing is scheduled on **[day, month, date, year – can schedule for the last day of the public notice (it must be after close of business if scheduled for the 7th day), the day after the end of the public notice period or the next working day]** at **[time]** to receive public comments on the consistency determination. The hearing will be held in the **[name of building and location]**. Any person wishing to be heard at this hearing must contact the governing body at the address identified above for receiving comment no later than **[month, day, year - last day of public notice]**. If the **[insert name]** County **[fiscal court/109 board]** receives no requests for a public hearing, the public hearing may be cancelled.

The Fiscal Court will respond to written public comments by *(has to be within fifteen days of the end of the public notice)* **[month, day, year]** and will take action determining consistency at the **[month, day, year]** **[insert name]** County **[fiscal court/109 board]** meeting.

**RESOLUTION
DETERMINATION OF CONSISTENCY/INCONSISTENCY**

WHEREAS: The County/City of **[insert name]**, based on the Notice of Intent dated **[date]** from **[applicant's name]** request to issue a determination of consistency with the **[insert name]** County Area Solid Waste Management Plan, pursuant to KRS 224.40-315(1), to **[construct/increase]** the tonnage/volume of airspace for the **[contained landfill/ off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility; and

WHEREAS: The total capacity **[requested/authorized]** for the *newly constructed* **[contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility is _____ tons (_____cubic yards) and;

AND/OR

WHEREAS: The proposed **[expansion request/authorization]** will *increase* the **[contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility by _____ tons (_____cubic yards); and

WHEREAS: The proposed request is **[consistent/inconsistent]** with the area solid waste management plan: and

WHEREAS: The **[insert name]** County **[fiscal court/109 board]** published the Public Notice required by KRS 224.40-315(1) on **[date]**, and scheduled a public hearing on **[month, day, year]**; and

WHEREAS: The **[insert name]** County **[fiscal court/109 board]** has considered the request for consistency filed by **[applicant's name]**, and oral comments **[were/were not]** received at the public hearing conducted on **[date]**, and written comments **[were/were not]** received during the public comment period provided in the Public Notice;

NOW, THEREFORE, BE IT RESOLVED that the **[insert name]** County **[fiscal court/109 board]**, as the governing body for the **[insert name]** County Solid Waste Management Area, hereby determines that the **[applicant's name]**'s request is *consistent* with the **[insert name]** County Area Solid Waste Management Plan; because:

- A. The **[insert name]** County **[fiscal court/109 board]**, after due consideration and review, formally amended the plan to allow for the **[construction/expansion]** of the **[contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility.
- B. The **[insert name]** County **[fiscal court/109 board]** authorized a total capacity, _____ tons for a _____ year period for the **[construction/expansion]** of the **[contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility.
- C. The **[insert name]** County **[fiscal court/109 board]**, after due consideration and review, determines the **[applicant's name]**'s request is included in the **[insert name]** County area solid waste management plan.

OR

NOW, THEREFORE, BE IT RESOLVED that the **[insert name]** County **[fiscal court/109 board]**, as the governing body for the **[insert name]** County Solid Waste Management Area, hereby determines that the **[applicant's name]**'s request is *inconsistent* with the **[insert name]** County Area Solid Waste Management Plan; because:

- A. The **[insert name]** County **[fiscal court/109 board]**, after due consideration and review, determines the **[applicant's name]**'s request is not included in the **[insert name]** County area solid waste management plan.
- B. The **[insert name]** County **[fiscal court/109 board]**, after due consideration and review, intends to conduct a 30 day public notice period to consider amending the **[insert name]** County area solid waste management plan to include the **[construction/expansion]** of the **[contained landfill/off-site residual landfill/greater than one acre construction demolition/debris landfill/incinerator/waste-to-energy]** facility.

OR

- B. The **[insert name]** County **[fiscal court/109 board]**, after due consideration and review, declines to formally amend the **[insert name]** County area solid waste management plan to include **[applicant's name]** request citing restrictions in **[insert name]** County solid waste management ordinance, number ____ **[and/or]** citing restrictions based on Section ____ of the solid waste management plan ordinance number ____ **[and/or]** citing restriction(s) based on the **[insert name]** County Siting ordinance number ____ **[and/or]** based on the **[insert name]** Planning and Zoning ordinance number ____.

Enacted this _____ day of _____, 20____.

Governing Body Chairperson

[insert name] County, Kentucky

**AMENDMENT AND/OR LOCAL DETERMINATION DOCUMENTS
FOR**

AREA SOLID WASTE MANAGEMENT PLAN

Name of Solid Waste Management Area: _____

Governing Body responsible for plan implementation:

Name: _____

Address: _____

Contact Person Name: _____

Address: _____

Email: _____

Telephone: _____

[insert name] County is submitting the enclosed information to be included as a part of the **[insert name]** County Area Solid Waste Management Plan.

Enclosures include:

- Two copies each of the solid waste management plan page replacements.
- Two copies of **all public notices** advertising the amendment review and/or the determinations of consistency with the area solid waste management plan. The public notice should consist of a tear sheet (whole page) of the newspaper and a copy of the article OR two copies of the public notice with an original and one copy with an affidavit from the newspaper verifying publication dates.
- Original and one copy of action(s) by the governing body approving the amendments and/or consistency determinations.
- Original and one copy of the letter informing the division the proposed amendment was not approved.
- Original and one copy of action(s) approving the amendments by first or second class city legislative bodies that have developed their portion of the plan.
- Agreements or contracts (if any).
- Proposed rules; regulations or by-laws (if any).
- Supporting documents.

Date

Governing Body Chairperson

[insert name]

County, Kentucky

PROCEDURES FOR LOCAL DETERMINATION

KRS 224.40-315 - The Division of Waste Management will not accept an application for the construction or expansion of a solid waste management facility unless the application contains a determination from the governing body that the proposed facility is consistent with the area solid waste management plan and solid waste management area.

Local determination means that a local governing body (as designated in your solid waste plan) reviews a permit application to determine if it is consistent with the plan.

After being notified by the applicant of their interest in constructing or expanding a municipal solid waste facility, a local governing body has 60 days to respond to the applicant with a consistency determination.

In summary, these are the steps for local determination:

- I. The applicant submits a written request to the governing body. The request can be the siting of a new or the expansion of an existing municipal solid waste disposal facility; i.e. contained landfill, construction/demolition debris landfill greater than one acre {see exceptions in KRS 224.40-310 (1)}, off-site residual landfill landfills, solid waste incinerator, or waste-to-energy facility.
- II. The governing body publishes a public notice outlining the applicant's request of consistency with the current area solid waste management plan. The public notice must run a minimum of seven (7) days and allow for a public hearing, if requested.
- III. The governing body, after oral and/or written public input, determines by resolution if the application is *consistent* or *inconsistent* with the current area solid waste management plan (plan).

A. If the application is *consistent* with the plan, the governing body passes a resolution outlining consistency with the plan and submits the resolution to the applicant and division; original proof of the public notice is also sent to the division.

B. If the application is *inconsistent* with the plan, the governing body has **two options**:

1. Based on the written and/or oral comments of the public notice for consistency and hearing (if requested) from the public, and after consideration by the governing body, the governing body can elect to pass a resolution stating the application's inconsistency with the plan and submit same to the applicant and the division; original proof of the public notice is also sent to the division.
 - a. KRS 224.40-315 (3) requires the cabinet to submit a written finding stating, "in detail the reasons why it did not accept the determination of the governing body for the area" regarding inconsistency with the plan.

OR

2. Based on the written and/or oral comments of the public notice for consistency from the public, and after consideration by the governing body, the governing body may elect to consider amending their plan through the process as outlined in the document "Steps to Amending Area Solid Waste Management Plan". Briefly, the steps include:
 - a. Submit the first local determination consistency public notice and resolution to the division along with Form A. The governing body should also send the applicant a cover letter (copy to the division) indicating the intent to conduct a public notice period to consider amending the plan to include applicant's request.

- b. Submit Form A to the division outlining the pages of the plan to be affected by the proposed amendment with the formal written description as required.
- c. The division will review and notify the governing body of the completeness of Form A and may instruct the governing body to complete Form B, which includes a thirty (30) day public notice and allows for a public hearing, if requested.
- d. Based on the written and/or oral comments from the public at the end of thirty (30) day public notice of the proposed amendment and public hearing (if requested), the governing body will decide if they want to pass a resolution approving the amendment.
 - 1. ***If the vote is to approve the amendment***, the governing body will **pass a resolution** to amend the plan and submit the resolution and all required documentation (see Form E) to the division. (Continue with 3. a. on this page).

OR

- 2. ***If the vote is to not approve the proposed amendment***, the governing body will **notify the division by letter** and submit the letter and all required documentation (see Form E) to the division and a copy of the letter to the applicant. The division will file the paperwork with the solid waste management plan.
- 3. The division reviews the submitted paperwork for completeness and notifies the governing body to:
 - a. Publish a public notice outlining the applicant's request for a determination of consistency with the current area solid waste management plan. The public notice must run a minimum of seven (7) days and allow for a public hearing, if requested.
 - b. The governing body, after oral and/or written public input, determines by resolution the application's consistency with the plan.
 - c. The governing body submits the resolution and supporting documentation (see Form E) outlining consistency with the plan to the Division with a copy of the resolution to the applicant.
 - d. The division reviews the submitted material for completeness and notifies the governing body the process is complete.

Effective January 21, 2005

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, 224.43-310(5), 224.43-340(2), (8), (9), 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345

NECESSITY, FUNCTION, AND

CONFORMITY: KRS 224.43-340(1)

authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation sets forth general requirements and procedures for submittal, processing, and amending of area solid waste management plans.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this administrative regulation as "the plan," shall contain the information specified in KRS 224.43-345.

(2) The plan shall be prepared and formatted in accordance with the document[s] entitled "Guidance for Preparing an Area Solid Waste Management Plan 5-Year Up[date]", DEP Form 6062 (February 2004).

Section 2. Public Information

Procedures. (1) The governing body of a solid waste management area shall be responsible for conducting a public information period on the contents of the plan, or an amendment to the plan pursuant to Section 4 of this administrative regulation, prior to its submittal to the cabinet.

(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice in accordance with

subsection (3) of this section.

(3) A public notice shall be published by the governing body that meets the following requirements:

(a) The public notice shall be of a size to include not less than two (2) column widths and shall be in a display format;

(b) The public notice shall be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan; and

(c) The public notice shall include a description of the proposed action, location where the plan may be reviewed, procedures for submitting comments, and location of the public hearing, if a hearing is requested.

(4) The governing body shall hold a public hearing if, during the public comment period, one is requested. The hearing shall be held within fifteen (15) days of the close of the public comment period, with at least seven (7) days public notice. The public notice for a hearing shall be published in accordance with subsection (3) of this section. The hearing may occur in conjunction with the governing body's normally scheduled official meeting.

(5) The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period. The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public. The notice shall state where copies of the response are maintained and how it may be obtained. The governing body shall also mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review

Process. (1) All plans shall be submitted no later than the deadlines specified in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area.

(2) The original and one (1) copy of the plan shall be sent to the supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 200 Fair Oaks, Frankfort, Kentucky 40601.

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If the cabinet disapproves a plan, the cabinet shall notify the governing body in writing of each deficiency. The governing body shall have up to ninety (90) days from the [date] of the first notice of deficiency to correct all deficiencies and submit an approvable plan to the cabinet. The [time] elapsed during the governing body's correction of deficiencies shall not count toward the cabinet's 120-day review deadline specified in KRS 224.43-325(2). The cabinet may issue up to three (3) notices of deficiency during the ninety (90) day period. The cabinet may require the governing body to repeat the public information process described in Section 2 of this administrative regulation for any plans significantly modified during the review process.

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies within [time] frames specified by the cabinet, or fails to amend a plan in accordance with Section 4 of this administrative regulation, the cabinet may

take one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to 401 KAR Chapter 40;

(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan, including grants and reimbursements awarded under KRS 224.43-505; and

(c) Prepare a plan for the governing body, conduct the public information procedure specified in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended upon either the initiative of the governing body of the solid waste management area or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.

(2) If the cabinet makes a determination that an amendment to a plan is necessary under subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes. The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3)(a) If the governing body makes a determination to amend its plan, it shall prepare and submit to the cabinet a request to amend that contains the following:

1. Name of the county or area that intends to amend its plan;
2. Name and [address] of the governing body;
3. Name, [address], and [phone number] of a contact person;
4. Identification of the pages of the plan to

be affected and a brief statement of the nature of the amendment; and

5. A written description outlining the justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b) The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine whether a plan amendment is necessary. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with amending its plan in accordance with subsections (4) and (5) of this section.

(4)(a) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2 of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. The cabinet shall not require the governing body to publish a public notice if the proposed amendment is to:

1. Correct a clerical error;
2. Correct a typographical error;
3. Change the name, [address], or [phone number] of a person identified in the plan;
4. Make revisions to solid waste ordinances pertaining to changes in waste haulers, franchise agreements, or similar service changes in which services are revised and a public notice and comment period have already been conducted as part of the local ordinance approval process; or
5. Make similar minor administrative changes.

(b) Solid waste plan amendments which require the governing body to undertake the public information process described in Section 2 shall include any solid waste plan amendment that:

- 1. Increases fees to the public;**

2. Diminishes services to the public;

3. Closes a solid waste facility;

4. Establishes a new solid waste facility;

5. Expands the size or capacity of an existing facility; or

6. Changes the location of a solid waste facility.

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit the following to the cabinet:

(a) Two (2) copies of each page of the plan that is being amended;

(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the [date] of publication;

(c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;

(d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class city governing body that developed its portion of the plan, if required;

(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;

(f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and

(g) Any other supporting documentation as required by the cabinet.

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Up[date] Process. (1) The governing body shall submit to the cabinet for reapproval an up[date]d plan on or before October 1, 2007, and every five (5) years thereafter.

(2) The plan up[date] shall be subject to the

public information procedures of Section 2 of this administrative regulation.

(3) The cabinet shall review the plan up[date] in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet.

(2) If a governing body fails to implement an approved plan, the cabinet:

(a) Shall not endorse projects that generate solid waste under the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-340 until the governing body is in compliance with its plan;

(b) May withhold any grants, loans or other monies for the area and the counties and cities located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded under KRS 224.43-505, until the governing body is in compliance with its plan; and

(c) May initiate enforcement proceedings against the governing body pursuant to KRS 224.99-010 and 224.99-020.

Section 7. Annual Reports. (1) The annual report, specified in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area] The original and one (1) copy of the report shall

be sent to the supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 200 Fair Oaks, Frankfort, Kentucky 40601.

(2) The annual report shall be prepared and formatted using the "Solid Waste Management Area Annual Report Form", DEP Form 6061 (February 2004), incorporated by reference in Section 8 of this administrative regulation. This form shall be effective January 1, 2005, for the annual report covering calendar year 2005.

Section 8. Incorporation by Reference. (1)

The following material is incorporated by reference:

(a) "Guidance for Preparing an Area Solid Waste Management Plan 5-Year Up[date] (February 2004)"; and

(b) "Solid Waste Management Area Annual Report Form (February 2004)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 200 Fair Oaks, Frankfort, Kentucky 40601, (502) 564-6716, Division of Waste Management, 200 Fair Oaks, Frankfort, Kentucky 40601, (502) 564-6716, Monday through Friday, 8 a.m. to 4:30 p.m. (19 Ky.R. 330; Am. 780; eff. 9-23-92; 31 Ky.R. 371; 1237; eff. 1-21-05).

KRS 224.40-315 Requirements for acceptance and approval of permits to construct or expand municipal solid waste disposal facility.

(1) No permit to construct or expand a municipal solid waste disposal facility shall be accepted for processing by the cabinet unless the application contains a determination from the governing body for the solid waste management area in which the facility is or will be located concerning the consistency of the application with the area solid waste management plan submitted under KRS 224.43-345(1)(a) to (d) and (l) until January 1, 1993, and the entire plan after January 1, 1993. The governing body for the area shall, within sixty (60) days of receipt of a written request, make the determination after public notice and opportunity for public comment and public hearing. For applications with a notice of intent filed prior to February 26, 1991, the cabinet shall continue to process the application but no permit shall be approved until the governing body for the solid waste management area in which the facility is or will be located has made a determination in accordance with this section.

(2) No permit to construct or expand a municipal solid waste disposal facility shall be approved unless the applicant affirmatively demonstrates and the cabinet makes a written finding in the preliminary determination made pursuant to KRS 224.40- 310(2) that the application conforms to and is consistent with all of the following:

- (a) The capacity needs identified in the area solid waste management plan;
- (b) Other elements of the area solid waste management plan, for permit applications filed after approval of those elements;
- (c) The statewide solid waste reduction and management plan, for permit

applications filed after completion of the plan; and

- (d) Applicable zoning regulations adopted pursuant to KRS Chapter 100.
- (3) If the cabinet approves a permit to construct or expand a municipal solid waste management facility after the governing body for the area has determined the application to be inconsistent with the area solid waste management plan, as part of the written finding the cabinet shall state in detail the reasons why it did not accept the determination of the governing body for the area.
- (4) For the purposes of this section, the term municipal solid waste disposal facility includes, in addition to those facilities defined in KRS 224.01-010(15), any off-site residual landfill or contained landfill or incinerator disposing of industrial solid waste for a fee, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary.

LOCAL SOLID WASTE PLANNING INFORMATION

Determine Governing Body for the Area

- Governing Body is either the Fiscal Court or a 109 Board.
- 109 Counties have designated the Fiscal Court as the Governing Body.
- 11 Counties have designated a 109 Board as the Governing Body.

What is a 109 Board?

- KRS 109 is used by counties to reinforce their authority for managing solid waste at the local level.
- A 109 Board may be set up as an advisory group to the fiscal court or as an independent body that has total responsibility for solid waste management issues. The advantage of total responsibility is that the 109 Board may specialize in solid waste issues only, a luxury a fiscal court does not have.
- The Fiscal Court determines whether the 109 Board is advisory or assumes total responsibility.

Responsibilities of the Governing Body

- Develop and implement the local solid waste management plan.
- Complete and mail the County Annual Report by March 1 of each year.
- Amend solid waste management plan, if necessary.
- Determine consistency of applications to expand or site a new municipal solid waste disposal facility in the county (local determination process).
- Negotiate a host community agreement with the disposal facility located in the county.

Authority of the Governing Body

- **Develop and implement solid waste management plan** – The current five year update covers the years 2008 – 2012. The governing body is responsible for implementing the plan.
 - **Components of the plan** – Plan includes collection (providing the system or contracting with haulers), disposal of municipal solid waste, planned programs for litter and illegal open dump prevention and cleanup, recycling/reduction programs; public education/participation program; enforcement and siting procedures. All tasks identified for each component of the plan must be implemented during the 5-year period of the plan.
 - **Capacity allowance for disposal of county waste** – The governing body receives assurance that a disposal facility(ies) is available to dispose of their waste for a 10-year period.
- **Authorize disposal in the county** – If the county hosts a landfill, the governing body **has the authority** to determine the **total capacity** authorized for disposal in the county for a 10-year period. The total capacity is identified in Chapter 3 of the plan. As part of the solid waste management plan, the governing body **does not** have authority to limit sources or types of waste disposed in the county. The statutes governing solid waste planning give the county authority for **capacity only**.
- **Conduct local determination** – Any time an applicant wants to construct a new disposal facility or expand an existing facility, the governing body must determine if the application is consistent with the solid waste management plan. **This process is the link between solid waste planning and permitting.** The governing body makes this determination before the permit is issued. Consistency is determined by reviewing the plan to see if the facility is included in the plan and identifying the total capacity authorized for disposal for 10 years. State permitting staffs are required by statute to consider the determination made by the governing body. If the state overrides a determination, they must explain the reasons for doing so in writing. To date, the state has not over turned any local determination.

- **Negotiate host community agreements** – Because the solid waste management plan controls capacity only, many counties have negotiated host community agreements with disposal facilities in their area. **This agreement or contract is a separate document from the solid waste management plan and therefore, will be enforced at the local level. A Host Community Agreement is not a state requirement.** Counties have addressed additional issues such as: types of waste to be disposed, sources (where the waste will come from), assistance with educational program, recycling/reduction programs, fees to be paid to the county, assurance for disposal of county waste, set per day and/or per year disposal amounts. Since a host community agreement is a contract between the county and disposal facility, these additional issues are discussed and agreed upon prior to both parties signing.
- **KRS 68.178** allows a county to invoke a license fee for off-site waste management facilities.
- **Amend the solid waste management plan** – The governing body has the authority to request to amend the plan at any time. The governing body must complete the forms and follow the directions in the amendment package. A 30-day public comment period is required before the plan amendment is forwarded to the state for approval.

Statutes Governing County Solid Waste Management

- KRS 67 – Broad authority for solid waste management
- KRS 109 – Specific authority for solid waste management
- KRS 224.40-100 – Open dumps prohibited
- KRS 224.40-315 – Local determination
- KRS 224.43-315 – County universal garbage collection system and annual report requirements
- KRS 224.43-340 and 224.43-345 – Solid waste plan requirements
- KRS 224-43-500 – Environmental remediation fee to be paid by generator of waste
- 224.43-505 - Kentucky pride fund – Distribution – Grants to eliminate illegal open dumps – Recycling and household hazardous waste grants program

County Solid Waste Coordinator

- Currently 113 counties have a Solid Waste Coordinator; 55 are part-[time].
- Not a state requirement unless it is part of the county solid waste management plan.
- A county is required to have a solid waste coordinator with enforcement powers if the county submits grant requests for illegal open dump cleanups from the Kentucky Pride Fund.
- We do encourage counties to hire a Solid Waste Coordinator because it allows the county to designate a person to perform day-to-day tasks to ensure the plan is implemented.

State Solid Waste Management Activities

- **Commonwealth Cleanup Week** – The 1998 General Assembly designated the fourth week in March as Commonwealth Cleanup week to support efforts to spring-clean our state.
- A poster contest for grades 1-8 is included and counties are asked to sponsor litter and illegal open dump clean ups during the Commonwealth Cleanup Week.
- **Waste Tire Trust Fund – Expires July 1, 2010**
 1. **Tire Amnesty Program** – The program has removed over 15 million tires through the amnesty program and the cleanup of large sites throughout the state since 1998.
 2. **Crumb Rubber Grants** - The Waste Tire Trust Fund awards grants to assist schools and communities in projects using crumb rubber from waste tires for athletic fields, gyms, parks and community playgrounds.

Definitions

KAR 49:011, Section 4(4)(b)4. and 5. References a “solid waste facility”.

KRS 224.01-010(15) ***Municipal solid waste disposal facility*** means any type of waste site or facility where the final disposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, but is not limited to, incinerators and waste-to-energy facilities that burn municipal solid waste and contained and residential landfills...

KRS 224.01-010(27) ***Waste site or facility*** means any place where waste is managed, processed, or disposed of by incineration, landfilling, or any other method, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility, or the combustion of processed waste in a utility boiler.

KRS 224.01-010(31)(a)4. ***Municipal solid waste*** means household solid waste and commercial solid waste:

KRS 224.01-010 (41) ***Solid waste management facility*** means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such was or otherwise, ...

KRS 224.40-315 Requirements for acceptance and approval of permits to construct or expand municipal solid waste disposal facility

- (1) **No permit to construct or expand a municipal solid waste disposal** shall be accepted for processing by the cabinet unless the application contains a determination from the governing body for the solid waste management area in which the facility is or will be located concerning the consistency of the application with the area solid waste management plan submitted under KRS 224.43-315(!)(a) to (d) and (l)....
- (2) No permit to construct or expand a municipal solid waste disposal facility
- (3) If the cabinet approves a permit to construct or expand a municipal solid waste management facility after the governing body has determined that it is inconsistent...the cabinet shall state in detail the reasons why it did not accept the determination of the governing body.
- (4) **For the purposes of this section, the term municipal solid waste disposal facility includes, in addition to those facilities defined in KRS 224.01-010(15), any off-site residual landfill or contained landfill or incinerator disposing of industrial solid waste for a fee...**